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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/564,943

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Shigeo Iizuka

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P.O. BOX 320850

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EXAMINER

SHEARER, DANIEL R

ART UNIT

PAPER NUMBER

3754

NOTIFICATION DATE

DELIVERY MODE

03/25/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/564,943	<b>Applicant(s)</b> IIZUKA ET AL.	
	<b>Examiner</b> DANIEL R. SHEARER	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-9 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,813,576 to Iizuka et al. (Iizuka) in view of U.S. Patent No. 4,925,106 to Maas et al. (Maas).

Iizuka shows a foamer dispenser (Fig. 50) comprising: a base cap (150) fixedly held at a container mouth; two pumps (10 and 20) attached to the base cap and configured to separately suck, pressurize, and pressure-feed ambient air and the liquid contents filled in the container (Col. 22, ll. 23-67, Col. 23, ll. 57-67 and Col. 24, ll. 1-26); a depression head (100) for defining a merging space (46) for merging outlet passages

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of the pumps with each other, the depression head having an ejecting end (107) communicated with the outside, and the depression head having an internal passage (108b) for communicating the merging space with the ejecting end, so as to eject contents mixed with the ambient air from the ejecting end by repeating depressing and returning operations of the depression head (Col. 23, ll. 3-14); and a foaming element (131, 132, 133) disposed within the internal passage of the depression head (Fig. 50) and configured to foam the contents mixed with the ambient air (Col. 50, ll. 12-18). The foaming element comprises: a jet ring (131) having an inlet opening (134) with an opening area narrower than that of the internal passage of the depression head (Fig. 50), the jet ring comprising a tubular body (Col. 18, ll. 63-66) with an opening area larger than that of the inlet opening and communicated with the internal passage of the depression head (Fig. 50); and a plurality of meshes (133, Col. 29, ll. 56-67 and Col. 29, ll. 1-13) disposed within the tubular body of the jet ring so as to face to the inlet opening of said jet ring (Fig. 51). The meshes have a number of fine holes to be contacted with the contents mixed with the ambient air and supplied from the inlet opening to allow a part of the contents to pass through the mesh (Col. 19, ll. 12-20). The meshes are each coupled to a separate mesh ring (132, Col. 29, ll. 56-67 and Col. 29, ll. 1-13). The mesh further has an opening diameter larger than that of the inlet opening of said jet ring (Fig. 51).

lizuka fails to specifically disclose that the mesh has an opening diameter  $\Phi 2$  which is 2.0 to 3.5 times or 2.2 to 3.2 times as large as an opening diameter  $\Phi 1$  at the inlet opening of said jet ring. It would have been obvious to one of ordinary skill in the

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art at the time the invention was made to have manufactured the foamer dispenser of lizuka with the specified ratio of the diameter of the mesh opening to diameter of the inlet opening since it has been held where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. (See MPEP 2144.05).

lizuka discloses that the mesh is adjustable between a plurality of positions to achieve optimum bubble size (Col. 52, ll. 66-67, Col. 53, ll. 1-19) but is silent with respect to how the mesh is attached to the jet ring and therefore fails to disclose at least two pairs of ribs being formed at least at two positions inside the jet ring to allow for a plurality of positions for fixing the mesh

Maas shows a foamer dispenser (Fig. 1) comprising a container (16), pump (10), and foaming nozzle (Fig. 12) with a mesh (160) secured in the nozzle body by a pair of ribs (171, 172) to facilitate an interference fit (Col. 8, ll. 57-62). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the jet ring and mesh of lizuka with ribs as taught by Maas to facilitate an interference fit. It would have further been obvious to provide at least two pairs of ribs to correspond to the plurality of mesh positions taught by lizuka.

Regarding claim 3, lizuka shows that the jet ring has a tapered surface (131b) or curved surface connecting between said inlet opening and said plurality of meshes.

Regarding claim 4, lizuka shows that the pumps consist of a dual pump comprising: a cylinder (22) suspended from a lower surface of said base cap (150), and configured to cooperate with an inner periphery of the mouth of the container to define

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an annular gap (27) there between which is communicated with an interior of the mouth and sealed by said base cap (Fig. 50); and two pistons (50 and 60) arranged in series with each other within said cylinder so as to be slidable therein (Figs. 50 and 51); and wherein said pistons are configured to separately suck, pressurize, and pressure-feed the contents within the container and the ambient air (Col. 22, ll. 23-67, Col. 23, ll. 57-67 and Col. 24, ll. 1-26).

Regarding claim 5, lizuka shows that the dual pump is formed with an ambient air introduction port (64) at a cylinder portion (22) constituting the pump for sucking, pressurizing, and pressure-feeding the ambient air, the ambient air introduction port being blocked by said piston (Col. 21, ll. 7-22) for sucking, pressurizing, and pressure-feeding the ambient air when said piston is in a stationary state (Fig. 49) where said piston is kept unslid, and the ambient air introduction port being released from said piston when said piston is depressed, to thereby introduce ambient air into the container (Fig. 51).

Regarding claims 6 and 7, It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided ribs at the side of the depression head and at the side of the inlet opening of lizuka as modified by Maas to correspond to the mesh positions shown in Figures 52 and 53 of lizuka.

Regarding claim 9, lizuka discloses that the mesh of the jet ring is circular in transverse cross sectional shape (Col. 19, ll. 12-14) and the inlet opening of the jet ring is circular in transverse cross sectional shape (Col. 18, ll. 63-67 and Col. 19, ll. 1-11).

***Response to Arguments***

4. Applicant's arguments filed 12/28/2009 have been fully considered but they are not persuasive. Applicant argues that "the nets 133 of lizuka are disposed on the same bubbling element 132, and thus are not coupled to separate bubbling elements" and cites Figure 1 of lizuka as support for this argument. However, in Col. 29, ll. 56-67 and Col. 29, ll. 1-13, lizuka discloses that there are two bubbling elements 132, and each bubbling element is composed of a net (mesh) provided on one end opening of the cylinder body. Therefore, lizuka clearly teaches a plurality of meshes with each being coupled to a separate mesh ring.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL R. SHEARER whose telephone number is (571)270-7416. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. R. S./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art  
Unit 3754